

On March 18, 1998 appellant, then a 47-year-old tax examiner, sustained an injury when he struck his right elbow on the corner of his desk. The Office accepted the claim for right medial epicondylitis. It also accepted a claim for recurrence of disability on December 30, 1998. The Office authorized the surgery for the release of right cubital tunnel syndrome with

submuscular transposition of the ulnar nerve, which appellant underwent on April 22, 1999. Appropriate compensation and medical benefits were paid.

On July 26, 2005 appellant filed a claim for a schedule award. He submitted an impairment rating evaluation dated March 25, 2005 from Dr. George L. Rodriguez, a Board-certified physiatrist, who noted significant right elbow pain. Dr. Rodriguez determined that appellant had an impairment based on complex regional pain syndrome 2 -- reflex sympathetic dystrophy Class 3. He opined that, pursuant to Table 13-22, page 343 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), appellant had a 39 percent impairment. For sensory nerve impairment he evaluated appellant under Table 16-10, page 482 and 16-15, page 492 of the A.M.A., *Guides*. Dr. Rodriguez indicated that appellant had a Grade 4 sensory deficit, which he calculated at 10 percent. Under Table 16-15 the maximum upper extremity impairment due to sensory deficit allowed for ulnar nerve is seven percent. Dr. Rodriguez opined that appellant had a deficit of one percent based on sensory nerve impairment. He then concluded that appellant had a total combined right upper extremity impairment of 40 percent.

On April 29, 2005 the Office medical adviser reviewed the medical evidence and determined that appellant had a two percent impairment of the right upper extremity based on the A.M.A., *Guides*. The Office medical adviser stated:

“Based upon my evaluation, I do not believe that [appellant] meets the criteria for reflex sympathetic dystrophy, therefore, should not be awarded 39 percent Class 3 right upper extremity impairment based on complex regional pain syndrome, reflex sympathetic dystrophy, Table 13-22, page 343.

“Based upon my evaluation, I would suggest the schedule award be based on A.M.A. *Guides*, fifth edition, page 492, Table 16-15, ulnar nerve, seven percent maximum sensory. Page 482, Table 16-10, [G]rade 4, 25 percent. 25 percent times 7 percent equals 1.75 percent rounded off to 2 percent. Based on various evaluations it would be my recommendation that the schedule award be made of two percent right upper extremity impairment.

“Maximum medical improvement May 25, 2005. I do not believe there is weighted medical evidence to suggest this claimant has reflex sympathetic dystrophy.

On November 22, 2005 the Office referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated December 16, 2005, Dr. Hanley stated that he did not believe that appellant had much in the way of residuals from his original employment injury. He stated that there was “clearly no evidence of an impairment rating” and that appellant “clearly does not have chronic regional pain syndrome.” Dr. Hanley stated that the A.M.A., *Guides* were utilized in his determination that appellant had no impairment.

By decision dated December 30, 2005, the Office issued a schedule award for a two percent impairment of appellant's right upper extremity. The Office based its calculations on a compensation rate of two-thirds. In response to appellant's January 3, 2006 letter to the Office indicating that he was married, the Office issued a new decision on January 17, 2006 awarding appellant benefits for a two percent impairment of his right upper extremity based on the three-quarters argued rate.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

ANALYSIS

In the instant case, the Board finds that the Office properly determined that appellant sustained a two percent impairment of his right upper extremity, for which he received a schedule award.

Dr. Rodriguez, appellant's physician, found that appellant had a 40 percent impairment of the right upper extremity. He stated that appellant was entitled to an impairment rating based on reflex sympathetic dystrophy and assigned a Class 3 impairment of 39 percent based on Table 13-22, page 343 of the A.M.A., *Guides*. Dr. Rodriguez also allowed a one percent impairment for sensory nerve impairment under Tables 16-10 and 16-15 of the A.M.A., *Guides*. However, Office procedures specifically provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.⁴ FECA Bulletin No. 01-05 (issued January 29, 2002), addresses complex regional pain syndromes at Table 13-22, noting that "the preferred method for determining impairment secondary to all complex regional pain syndromes is that described on [p]age 495-497" under Chapter 16 of the A.M.A., *Guides*.⁵ Dr. Rodriguez did not provide rationale for why he utilized Table 13-22, a protocol that the Office has stated is not to be followed. Furthermore, he made two impairment ratings for the same impairment: pain/sensory

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ See *id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003). See generally, *Frantz Ghassman*, 57 ECAB ____ (Docket No. 05-1947, issued February 2, 2006).

⁵ See also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003), which has incorporated FECA Bulletin No. 01-05.

loss.⁶ He first evaluated appellant's impairment regionally and then for a specific nerve. This reduces the probative value of his impairment ratings.

The Office medical adviser opined that appellant did not meet the criteria for reflex sympathetic dystrophy and should not be awarded 39 percent impairment based on complex regional pain syndrome and reflex sympathetic dystrophy pursuant to Table 13-22 of the A.M.A., *Guides*. Instead, he evaluated appellant based on Chapter 16 of the A.M.A., *Guides*, following the proper protocol. He noted that, pursuant to the A.M.A., *Guides*, Table 16-15, the maximum percent of impairment for sensory loss of the ulnar nerve is seven percent.⁷ The Office medical adviser then noted that, pursuant to Table 16-10, appellant had a Grade 4 impairment which amounted to a 25 percent sensory deficit.⁸ He noted that 25 percent times 7 percent equaled a 1.75 percent impairment, which he rounded up to find a 2 percent impairment of the right upper extremity.

The Board finds that appellant is not entitled to a schedule award greater than that which he received.

CONCLUSION

The Board finds that appellant has not established that he sustained more than a two percent impairment of his right upper extremity, for which he received a schedule award.

⁶ *Id.* The Office's procedure manual provides in part regarding the preferred nonapplication of Chapter 13 as follows: "However, the impairment measurements obtained from this table are expressed only in terms of the whole person and further, the table differentiates between the dominant and nondominant side of the body."

⁷ A.M.A., *Guides* 492.

⁸ *Id.* at 482.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 17, 2006 is affirmed.

Issued: October 30, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board